IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1118 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESHCHANDRA UTTAMRAM PATEL

Versus

MAHENDRASINH UDESINH SINDHA

Appearance:

MR JYOTINDRA R.VYAS with MR.TARESH J BHATTJI for Petitioners Nos. 1-5

MR JITENDRA M.PATEL for Respondents Nos. 1-2

MR KT DAVE, AGP for Respondents Nos. 3-5

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/02/2002

ORAL JUDGEMENT

#. Heard the learned advocates.

#. The Civil Application No.12175/2001 has been moved by the respondents nos.1 and 2 seeking vacation of interim relief granted in the main Revision Application. However, having regard to the implication of the interim relief granted in the main matter, with the consent of all the learned advocates the Revision Application is taken-up for hearing and final disposal.

#. The petitioners before this Court are the plaintiffs in Court Case No.12/99 instituted under Section 5 of the Mamlatdar Court's Act, 1906 (hereinafter referred to as 'the Act') in the Court of Mamlatdar, Hansot, District Bharuch. The petitioners are the owners of the land bearing Survey No.167 admeasuring 7-Hec.42-Are 00-Sq.M. situated at Village Kanta Sayan, Taluka Hansot, District Bharuch. The petitioners claim that they have a right of passage with their implements through the lands Survey Nos.165 and 178 belonging to the respondents nos.1 and 2. The petitioners have been carrying their implements, oxen, tractors, trailers, etc. through the passage over the western boundary of the said lands Survey Nos.165 and 178. However, on 4th September, 1999, the respondents nos.1 and 2 restrained the petitioners from using the said lands and did not allow the plaintiffs to reach their fields. Therefore, the suit.

#. The said suit was tried by the Mamlatdar, Hansot, and under his order dated 10th July, 2000, the same was allowed. The respondents nos.1 and 2 were injuncted from restraining the plaintiffs from using the passage over the western boundary of the said lands Survey Nos.165 and 178. Feeling aggrieved, the respondents nos.1 and 2 preferred Revision Application No.1/2000 before the Deputy Collector, Bharuch. The said Revision was partly allowed by the Deputy Collector, Bharuch under his order dated 13th October, 2000. The Deputy Collector, Bharuch did not enter into the merits of the matter. The Deputy Collector, Bharuch was of the opinion that the procedure prescribed under Sections 7,9,10 and 11 of the Act was not scrupulously followed by the trial Court. He, therefore, did not address on substantive issues and remanded the suit to the Mamlatdar, Hansot for hearing and decision afresh after complying with the provisions contained in Sections 7,9,10 and 11 of the Act. Feeling aggrieved, the petitioners have preferred the present Revision under Section 115 of the Code of Civil Procedure.

#. The matter at issue in this Revision Application is, whether the procedure prescribed under Sections

7,9,10 and 11 of the Act are mandatory or directory i.e. are those procedures such that the slightest breach should render the entire proceedings null and void calling for fresh proceedings or are the said procedures directory i.e. even if there is any breach, unless a prejudice is caused to the defendants, such breach would not render the entire proceedings null and void. Prima facie, I am of the opinion that the said procedure is directory. Breach of any such requirement would not render the proceedings null and void, unless the defendants demonstrate that on account of such breach prejudice is caused to them. In the present case, the learned advocate Mr.JM Patel appearing for the respondents nos.1 and 2 has, in consultation with the said respondents, agreed that on account of the breach in question no prejudice has been caused to the said respondents. He has, therefore, submitted that the matter at issue may not be decided. The respondents nos.1 and 2 shall not press the point of the breach of the procedure prescribed under Sections 7,9,10 and 11 of the Act and shall invite order on merits.

#. As observed hereinabove, the Deputy Collector, Bharuch did not decide the Revision Application on merits and instead set aside the order of the Mamlatdar on the ground of procedural breach alone. The matter shall, therefore, have to be remanded to the Deputy Collector, Bharuch for decision on merits.

#. In above view of the matter, the Revision Application is allowed. The impugned judgment and order dated 13th October, 2000 passed by the Deputy Collector, Bharuch in Revision Application No.1/2000 is quashed and set aside. The Revision Application No.1/2000 is remanded to the Deputy Collector, Bharuch for decision on merits.

#. It is clarified that the respondents nos.1 and 2 - the revision petitioners before the Deputy Collector, Bharuch, shall not be at liberty to press the Revision Application on the ground of breach of procedural requirements under Sections 7,9,10 and 11 of the Act. The Revision Application shall have to be argued and decided on merits and on substantive issues. It is further clarified that the remand of the Revision Application to the Deputy Collector shall not revive the interim order made pending the said Revision Application. The respondents nos.1 and 2 shall be at liberty to apply for interim relief/injunction/stay before the Deputy Collector, Bharuch. It is also made clear that the view expressed by me hereinabove is a prima facie view and no

further deliberation is made on the said matter.

#. Rule is made absolute in the above terms with cost. Interim relief is vacated.

(Ms. R.M.Doshit, J.)

/sakkaf